FILED
U.S. Bankruptcy Appellate Panel of the Tenth Circuit

April 20, 1998

Barbara A. Schermerhorn Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE TSEDENIA HILL, Debtor.	BAP No. KS-97-099
TSEDENIA HILL, Appellant, v. NORWEST FINANCIAL KANSAS, INC., Appellee.	Bankr. No. 97-13437 Chapter 7 ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Kansas

Before BOHANON, BOULDEN, and MATHESON, Bankruptcy Judges.

MATHESON, Bankruptcy Judge.

After examining the briefs and appellate record, the Court has determined

* This order and judgment has no precedential value and may not be cited, except for the purposes of establishing the doctrines of law of the case, res judicata, or collateral estoppel. 10th Cir. BAP L.R. 8010-2.

unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. Bankr. P. 8012; 10th Cir. BAP L.R. 8012-1(a). The case is therefore submitted without oral argument.

This Court has before it for review the order of the United States Bankruptcy Court for the District of Kansas, which denied the motion of the debtor to avoid the lien of Norwest Financial Kansas, Inc. ("Norwest") pursuant to 11 U.S.C. § 522(f). For the reasons set forth below, we affirm the decision of the bankruptcy court.

JURISDICTION AND STANDARD OF REVIEW

A Bankruptcy Appellate Panel, with the consent of the parties, has jurisdiction to hear appeals from final judgments, orders and decrees of bankruptcy judges within this circuit. 28 U.S.C. §158(c)(1). As neither party to this appeal has opted to have this matter heard by the District Court for the District of Kansas, they are deemed to have consented to the jurisdiction of this Court. 10th Cir. BAP L.R. 8001-1.

The Bankruptcy Appellate Panel may affirm, modify or reverse a bankruptcy court's judgment, order or decree, or remand with instructions for further proceedings. Findings of fact cannot be set aside unless they are clearly erroneous. Fed. R. Bankr. P. 8013; ***First Bank v. Reid (In re Reid)***, 757 F.2d 230, 233-34 (10th Cir. 1985). The clearly erroneous standard does not apply to the bankruptcy court's conclusions of law or as to mixed questions of law or fact. Those matters are reviewed *de novo*. ***Pierce v. Underwood***, 487 U.S. 552, 558 (1988).

BACKGROUND

Prior to the filing of her bankruptcy case, the Debtor purchased certain items of household goods and furnishings. The purchase price was financed by the Debtor giving to the seller a promissory note and security interest. That note and security interest were then assigned to Norwest. Thereafter, Norwest refinanced the Debtor's loan. In doing so, Norwest advanced an additional $500.67 to the Debtor, and the Debtor gave additional collateral consisting of other household goods.

After the bankruptcy case was filed, the Debtor filed a motion pursuant to 11 U.S.C. §522(f) seeking to avoid the security interest held by Norwest in the household goods and furnishings. The Debtor argued that by refinancing the loan, Norwest had given up its status as the holder of a purchase money security interest. The bankruptcy court denied the Debtor's motion and declined to avoid the lien as to the collateral covered by the original purchase money security agreement. This appeal followed.

DISCUSSION

The Debtor argues that the refinance of the purchase money loan and the advance of additional funds by Norwest constituted a transformation of the purchase money security interest into a nonpurchase money security agreement. The bankruptcy court held that, as a matter of law in the Tenth Circuit, refinancing of a purchase money loan does not automatically transform a purchase money security interest into a nonpurchase money security agreement. We agree.

The law on this issue was settled by the Tenth Circuit in the case of ***Billings v.***

Avco Colorado Indus. Bank (In re Billings), 838 F.2d 405 (10th Cir. 1988). In that opinion, the Tenth Circuit rejected the transformation argument. The court held instead that the intent of the parties determines whether a refinanced debt will retain its purchase money character. ***Id.*** at 409. While that conclusion was reached pursuant to the law of the state of Colorado, the same rule is applied in the state of Kansas. ***In re Gibson***, 16 B.R. 257, 268 (Bankr. D. Kan. 1981); ***Fourth Nat'l Bank v. Hill,*** 181 Kan. 683, 695, 314 P.2d 312, 322 (1957)(chattel mortgage context).

The question of the parties' intent is one of fact to be reviewed by this Court on a clearly erroneous standard. It is the obligation of the appellant to provide this Court with a record upon which it can determine whether the bankruptcy court made an erroneous factual determination. In the absence of such a record, this Court cannot review the decision of the bankruptcy court to determine whether the order denying the Debtor's motion was proper. ***United States v. Vasquez,*** 985 F.2d 491, 495 (10th Cir. 1993); ***Moore v. Subaru of America,*** 891 F.2d 1445, 1448 (10th Cir. 1989); ***U S. United States v. Tedder***, 787 F.2d 540, 541 n.2 (10th Cir. 1986).

In the instant case, the Debtor has failed to provide this Court with any record evidencing the underlying facts or the terms of the various agreements entered into. Thus, this Court is unable to review the findings and determinations of the bankruptcy court. The factual findings of that court must stand and the legal conclusions are clearly correct and in accordance with the law articulated by the Tenth Circuit in the ***Billings*** case. Accordingly, the order of the bankruptcy court denying the Debtor's motion to

avoid Norwest's purchase money security interest is affirmed.